

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0374
Withholding Tax and Sales Tax
Responsible Officer
For the Tax Period 1999-2001

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ISSUE

1. Sales and Use and Withholding Tax-Responsible Officer Liability

Authority: IC 6-3-4-8(f), IC 6-2.5-9-3, IC 6-8.1-5-1(b).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate withholding taxes.

STATEMENT OF FACTS

The taxpayer was an incorporator, shareholder, and employee of a corporation that did not remit the proper amount of sales and withholding taxes to Indiana. The taxpayer was personally assessed for the taxes, penalties and interest. The taxpayer protested these assessments and a hearing was held. This Letter of Findings results.

1. Sales and Withholding Tax-Responsible Officer Liability

DISCUSSION

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

- (1). is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2). has a duty to remit state gross retail or use taxes to the department;
holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that “In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.”

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that assessment is incorrect. IC 6-8.1-5-1 (b).

The issue to be determined in this case is whether or not the taxpayer was a person who was responsible for remitting the corporate trust taxes to the Indiana Department of Revenue. Although given ample opportunity to do so, the taxpayer did not submit any documentation indicating that he was not a person with the responsibility to remit trust taxes to the state. Therefore, the taxpayer failed to sustain his burden of proving that the trust taxes were incorrectly assessed against him personally.

FINDING

The taxpayer’s protest is denied.